

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

**YETI Coolers, LLC,**

**Plaintiff,**

**v.**

**Sutter's Mill Specialties, Inc. d/b/a LXG, Inc.,**

**Defendant.**

**Civil Action No. 1:18-cv-00633-RP**

**Judge Robert L. Pitman**

**CONSENT JUDGMENT**

Plaintiff, YETI Coolers, LLC (“YETI”), filed civil action number 1:18-cv-00633-RP in the Western District of Texas, against defendant, Sutter’s Mill Specialties, Inc. d/b/a LXG, Inc. (“Sutter’s Mill”), asserting claims for (1) trade dress infringement in violation of 15 U.S.C. § 1125(a); (2) trade dress dilution in violation of 15 U.S.C. § 1125(c); (3) unfair competition and false designation of origin in violation of 15 U.S.C. § 1125(a); (4) trade dress dilution in violation of Tex. Bus. & Com. Code § 16.103; (5) common law trade dress infringement; (6) common law unfair competition; (7) common law misappropriation; and (8) unjust enrichment. YETI duly served its Complaint on Sutter’s Mill on July 31, 2018. Sutter’s Mill now stipulates and consents to the Court’s entry of this Consent Judgment.

NOW THEREFORE, upon consent of YETI and Sutter’s Mill, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. The Court has subject matter jurisdiction over this action pursuant to at least 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1338(a) & (b), and 1367(a).

2. This Court has personal jurisdiction over Sutter's Mill, and venue is proper in this judicial district at least because, *inter alia*, Sutter's Mill is doing business in the State of Texas, including in this District.

3. Sutter's Mill sold, offered to sell, promoted, advertised, imported, and distributed 20 oz. tumblers and 30 oz. tumblers that YETI accused of violating YETI's intellectual property rights (collectively the "Accused Products").

4. YETI owns all right, title, and interest in and to the trade dress of the YETI 20 oz. Rambler® tumbler and the YETI 30 oz. Rambler® tumbler, including the overall look and appearance of the YETI 20 oz. and 30 oz. Rambler® tumblers, and all common law trademark and trade dress rights in the YETI 20 oz. and 30 oz. Rambler® tumblers. The trade dress of the YETI 20 oz. and 30 oz. Rambler® tumblers is hereafter referred to as the "YETI Trade Dress."

5. Sutter's Mill agrees that the YETI Trade Dress is unique, distinctive, non-functional, well known, famous, and has acquired distinctiveness and is associated by consumers with YETI, and that the goodwill associated with the YETI Trade Dress belongs exclusively to YETI.

6. Sutter's Mill agrees that YETI owns all right, title, and interest in and to the YETI Trade Dress and that the YETI Trade Dress is valid and enforceable.

7. Sutter's Mill agrees that the YETI Trade Dress is not essential to the use or purpose of a tumbler, does not affect the cost or quality of a tumbler, is not functional, is not the reason the YETI tumblers work, and, outside of the association with YETI's reputation and goodwill, is not important to the commercial success of tumblers, generally.

8. Sutter's Mill agrees that many competitors compete with YETI and Sutter's Mill and that these competitors sell tumblers having alternative designs that do not include elements of the YETI Trade Dress and have a different overall appearance compared to the YETI Trade Dress.

9. Sutter's Mill agrees that exclusive use of the YETI Trade Dress by YETI will not put competitors at a significant non-reputation-related disadvantage in the marketplace.

10. Out of respect for YETI's product designs and rights in the YETI Trade Dress, Sutter's Mill has agreed to cease selling the Accused Products.

11. Sutter's Mill shall have a period of time identified in the Settlement Agreement, to sell the Accused Products it currently has in inventory ("Inventory Products").

12. Except for the limited sale of the Inventory Products, Sutter's Mill shall not at any time manufacture, have manufactured on its behalf, import, use, purchase, promote, market, advertise, distribute, offer to sell, or sell (or aid, abet, or assist any other person or company in so doing) – either directly or indirectly – (a) any Accused Products in any color or color combination, (b) any product having a design that is confusingly similar to the YETI Trade Dress, or having the same model names or numbers (including the same Amazon Standard Identification Numbers, Stock Keeping Unit numbers, Universal Product Codes, or any other identifying numbers or names) as the Accused Products, or (c) any product that is likely to cause confusion, mistake, or to deceive as to the affiliation, connection, or association of Sutter's Mill with YETI, or as to the source, origin, sponsorship, or approval of the product by YETI.

13. Except as provided herein, each party shall bear its own costs and attorney fees.

14. This Court shall retain jurisdiction over the parties for the purpose of enforcing the terms of this Consent Judgment.

15. This Consent Judgment represents a final adjudication of all claims, counterclaims, and defenses that were, or could have been, brought between YETI and Sutter's Mill in this case. This Consent Judgment is intended to be final and shall bind YETI and Sutter's Mill on all issues that were or could have been litigated in this proceeding, and YETI and Sutter's Mill shall not appeal any issue from this proceeding.

SO ORDERED:

Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
United States District Judge

Consented and Agreed to:

By: /s/ Michael L. Krashin

Joseph J. Berghammer (admitted in the  
Western District of Texas)  
Illinois Bar No. 6273690  
jberghammer@bannerwitcoff.com  
Michael L. Krashin (admitted *pro hac vice*)  
Illinois Bar No. 6286637  
mktrashin@bannerwitcoff.com  
John A. Webb, Jr. (admitted *pro hac vice*)  
Illinois Bar No. 6321695  
jwebb@bannerwitcoff.com  
BANNER & WITCOFF, LTD.  
Ten South Wacker Drive  
Suite 3000  
Chicago, IL 60606-7407  
Telephone: (312) 463-5000  
Facsimile: (312) 463-5001

By: /s/ Steven Callahan (by permission)

Steven Callahan  
Texas State Bar No. 24053122  
scallahan@ccrlaw.com  
CHARHON CALLAHAN  
ROBSON & GARZA, PLLC  
3333 Lee Parkway, Suite 460  
Dallas, Texas 75219  
Telephone: (214) 521-6400  
Telecopier: (214) 764-8392

**ATTORNEYS FOR SUTTER'S MILL  
SPECIALTIES, INC. D/B/A LXG, INC.**

**ATTORNEYS FOR YETI COOLERS, LLC**

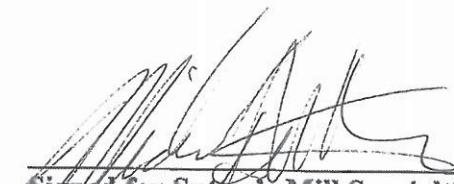
Byu Barksdale

Signed for YETI Coolers, LLC

Name: Bryan Barksdale

Title: General Counsel

Date: 9/10/18



Signed for Sutter's Mill Specialties, Inc.  
d/b/a LXG, Inc.

Name: Michael Butter

Title: President

Date: 9/14/2018